

competitors,” “improper disparagement,” “unfairly attaching,” “discrediting,” may operate as a restriction on comparative advertising. The Commission has previously held that disparaging advertising is permissible so long as it is truthful and not deceptive. In *Carter Products, Inc.*, 60 F.T.C. 782, *modified*, 323 F.2d 523 (5th Cir. 1963), the Commission narrowed an order recommended by the hearing examiner which would have prohibited respondents from disparaging competing products through the use of false or misleading pictures, depictions, or demonstrations, “or otherwise” disparaging such products. In explaining why it eliminated “or otherwise” from the final order, the Commission observed that the phrase would have prevented:

respondents from making truthful and non-deceptive statements that a product has certain desirable properties or qualities which a competing product or products do not possess. Such a comparison may have the effect of disparaging the competing product, but we know of no rule of law which prevents a seller from honestly informing the public of the advantages of its products as opposed to those of competing products. 60 F.T.C. at 796.

Industry codes which restrain comparative advertising in this manner are subject to challenge by the Federal Trade Commission.

(2) *Substantiation*. On occasion, a higher standard of substantiation by advertisers using comparative advertising has been required by self-regulation entities. The Commission evaluates comparative advertising in the same manner as it evaluates all other advertising techniques. The ultimate question is whether or not the advertising has a tendency or capacity to be false or deceptive. This is a factual issue to be determined on a case-by-case basis. However, industry codes and interpretations that impose a higher standard of substantiation for comparative claims than for unilateral claims are inappropriate and should be revised.

(Sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)
[44 FR 47328, Aug. 13, 1979]

§ 14.16 Interpretation of Truth-in-Lending Orders consistent with amendments to the Truth-in-Lending Act and Regulation Z.

Introduction

The Federal Trade Commission (FTC) has determined that there is a need to clarify the compliance responsibilities under the Truth-in-Lending Act (TILA) (Title I, Consumer Credit Protection Act, 15 U.S.C. 1601 et seq.), as amended by the Truth-in-Lending Simplification and Reform Act of 1980 (Pub. L. 96-221, 94 Stat. 168), and under revised Regulation Z (12 CFR part 226, 46 FR 20848), and subsequent amendments to the TILA and Regulation Z, of those creditors and advertisers who are subject to final cease and desist orders that require compliance with provisions of the Truth-in-Lending statute or Regulation Z. Clarification is necessary because the Truth-in-Lending Simplification and Reform Act and revised Regulation Z significantly relaxed prior Truth-in-Lending requirements on which provisions of numerous outstanding orders were based. The Policy Statement provides that the Commission will interpret and enforce Truth-in-Lending provisions of all orders so as to impose no greater or different disclosure obligations on creditors and advertisers named in such orders than are required generally of creditors and advertisers under the TILA and Regulation Z, and subsequent amendments to the TILA and Regulation Z.

Policy Statement

(a) All cease and desist orders issued by the FTC that require compliance with provisions of the Truth-in-Lending Act and Regulation Z (12 CFR part 226) will be interpreted and enforced consistent with the amendments to the TILA incorporated by the Truth-in-Lending Simplification and Reform Act of 1980, and the revision of Regulation Z implementing the same, promulgated on April 1, 1981 by the Board of Governors of the Federal Reserve System (46 FR 20848), and by subsequent amendments to the TILA and Regulation Z. Likewise, the Federal Reserve Board staff commentary to revised Regulation Z (46 FR 50288, October 9, 1981), and subsequent revisions to the

Federal Reserve Board staff commentary to Regulation Z, will be considered in interpreting the requirements of existing orders.

(b) After an amendment to Regulation Z becomes effective, compliance with the revised credit disclosure requirements will be considered compliance with the existing order, and:

(1) To the extent that revised Regulation Z deletes disclosure requirements imposed by any Commission order, compliance with these requirements will no longer be required; however,

(2) To the extent that revised Regulation Z imposes additional disclosure or format requirements, a failure to comply with the added requirements will be considered a violation of the TILA.

(c) A creditor or advertiser must continue to comply with all provisions of the order which do not relate to Truth-in-Lending Act requirements or are unaffected by Regulation Z. These provisions are not affected by this policy statement and will remain in full force and effect.

Staff Clarifications

The Commission intends that this Enforcement Policy Statement obviate the need for any creditor or advertiser to file a petition to reopen and modify any affected order under section 2.51 of the Commission's rules of practice (16 CFR 2.51). However, the Commission recognizes that the policy statement may not provide clear guidance to every creditor or advertiser under order. The staff of the Division of Enforcement, Bureau of Consumer Protection, will respond to written requests for clarification of any order affected by this policy statement.

[60 FR 42033, Aug. 15, 1995]

PART 16—ADVISORY COMMITTEE MANAGEMENT

Sec.

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AUTHORITY: Federal Advisory Committee Act, 5 U.S.C. App. I Section 8(a).

SOURCE: 51 FR 30055, Aug. 22, 1986, unless otherwise noted.

§ 16.1 Purpose and scope.

(a) The regulations in this part implement the Federal Advisory Committee Act, 5 U.S.C. App. I.

(b) These regulations shall apply to any advisory committee, as defined in paragraph (b) of § 16.2 of this part. However, to the extent that an advisory committee is subject to particular statutory provisions that are inconsistent with the Federal Advisory Committee Act, these regulations do not apply.

§ 16.2 Definitions.

For purposes of this part:

(a) *Administrator* means the Administrator of the General Services Administration.

(b) *Advisory committee*, subject to exclusions described in paragraph (b)(2) of this section, means any committee, board, commission, council, panel, task force, or other similar group, or any subcommittee or other subgroup thereof, which is established or utilized by the Commission for the purpose of obtaining advice or recommendations for the Commission or other agency or officer of the Federal Government on matters that are within the scope of the Commission's jurisdiction.

(1) Where a group provides some advice to the Commission but the group's advisory function is incidental and inseparable from other (e.g., operational or management) functions, the provisions of this part do not apply. However, if the advisory function is separable, the group is subject to this part to the extent that the group operates as an advisory committee.

(2) Groups excluded from the effect of the provisions of this part include:

(i) Any committee composed wholly of full-time officers or employees of the Federal Government;